

Filed 8/22/2016 4:49:06 PM
Jean Steptoe
District Clerk
San Augustine County, Texas
By Carmen Brown

CAUSE NO: CV-16-9680

JASON R. SEARCY, TRUSTEE FOR
THE BANKRUPTCY ESTATE OF
PINTO PONY COOKIE FACTORY,
LLC

VS.

STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY

IN THE DISTRICT COURT OF

SAN AUGUSTINE COUNTY, TX

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, JASON R. SEARCY, TRUSTEE FOR THE BANKRUPTCY
ESTATE OF PINTO PONY COOKIE FACTORY, LLC hereinafter called Plaintiff,
complaining of and against STATE AUTOMOBILE MUTUAL INSURANCE COMPANY,
hereinafter called Defendant, and for cause of action would show unto the Court the following:

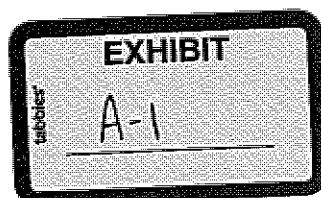
Discovery Control Plan

1. Plaintiff intends that discovery be conducted under Level 3 of Rule 190 of the
Texas Rules of Civil Procedure.

Parties

2. Plaintiff, Jason R. Searcy, brings this suit as the Trustee on behalf of the
Bankruptcy Estate of Pinto Pony Cookie Factory, LLC. Plaintiff is a resident of Gregg County,
Texas.

3. Defendant STATE AUTOMOBILE MUTUAL INSURANCE COMPANY is a
foreign company registered to engage in the business of insurance in the State of Texas and may
be served with process of service by serving its registered agent for service, Corporation Service
Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.



A TRUE COPY
I hereby certify
Jean Steptoe, District Clerk
San Augustine County Texas

Jurisdiction and Venue

4. The court has jurisdiction over this action because the amount in controversy is within the jurisdictional limits of the court. The court has jurisdiction over Defendant because Defendant engages in the business of insurance in the State of Texas and the cause of action arises out of Defendant's business activities in the State of Texas.

5. Venue is proper in San Augustine County, Texas because the insured property is situated in San Augustine County, Texas. Section 15.032 of the Texas Civil Practice and Remedies Code.

Facts

6. Pinto Pony Cookie Factory, LLC, was the owner of a business owners insurance policy issued by Defendant State Automobile Mutual Insurance Company. Pinto Pony Cookie Factory, LLC owns the insured property which is located at 114 North Harrison Street, San Augustine, Texas. Defendant sold the policy, insuring the property that is the subject of this lawsuit to Pinto Pony Cookie Factory, LLC

7. On or about September 4, 2015, Pinto Pony Cookie Factory, LLC suffered significant water damage with respect to the property at issue. Pinto Pony Cookie Factory, LLC timely and properly reported the loss to Defendant and made a claim for damages. Pinto Pony Cookie Factory, LLC provided Defendant with proof of loss and all other information that was requested.

8. Defendant failed to properly adjust Pinto Pony Cookie Factory, LLC's claim. Defendant failed to make an attempt to settle the claim in a fair manner although it was aware of its liability to Pinto Pony Cookie Factory, LLC under the policy. Defendant failed to affirm or deny coverage of Pinto Pony Cookie Factory, LLC's claim within a reasonable time. Defendant failed to meet its obligations under the Texas Insurance Code regarding payment of claims

A TRUE COPY
I hereby certify
Jean Steptoe District Clerk
San Augustine County Texas

without delay.

Causes of Action

9. Plaintiff incorporates paragraphs 1 through 8 by reference.
10. Defendant's conduct, as described herein, constitutes a breach of the insurance contract made between Defendant and Pinto Pony Cookie Factory, LLC.
11. Defendant has failed to attempt in good faith to effectuate a prompt, fair and equitable settlement of this claim for which liability has become reasonably clear and for refusing to pay a claim without conducting a reasonable investigation with respect to the claim.
12. From and after the time Pinto Pony Cookie Factory, LLC's claim was presented to Defendant, the liability of Defendant to pay the full claims in accordance with the terms of the policy was reasonably clear. However, Defendant has failed and refused to pay Pinto Pony Cookie Factory, LLC, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny the full payment. Defendant's conduct is a breach of the common law duty of good faith and fair dealing owed to insured's in insurance contracts.
13. Defendant's conduct constitutes multiple violations of the Texas Unfair Compensation and Unfair Practices Act, Tex. Ins. Code, Chapter 541. Defendant's conduct constitutes multiple violations of the Texas Prompt Payment of Claims Act, Tex. Ins. Code, Chapter 542.
14. As a result of Defendant's acts and omissions, Pinto Pony Cookie Factory, LLC was forced to hire an attorney to represent it in this cause of action.
15. All conditions precedent to suit have been met.

Damages

16. Plaintiff would show that all of the aforementioned acts constitute the proximate and/or producing causes of damages sustained by Pinto Pony Cookie Factory, LLC.

A TRUE COPY
I hereby certify
Jean Steptoe, District Clerk
San Augustine County Texas

17. Plaintiff says it is entitled to actual damages, contractual damages, court costs, attorney fees, as well as exemplary damages, as a result of Defendant's failure and refusal to meet its obligations.

18. Plaintiff's damages exceed the jurisdictional limits of this Court.

19. The Plaintiff requests that it be awarded prejudgment interest and post-judgment interest at the legal rate in accord with applicable law.

Jury Demand

20. Plaintiff demands a trial by jury.

Request for Disclosure

21. Under Texas Rule of Civil Procedure 194, Plaintiff requests the Defendant to disclose within fifty (50) days of service of this request the information and materials described in Rule 194.2 known as "Request for Disclosure."

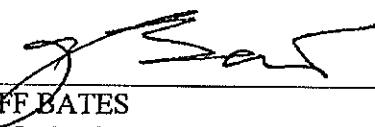
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and that upon final jury trial, Plaintiff have judgment of and from Defendant for all damages it may reasonably establish by a preponderance of the evidence, for prejudgment interest, for interest on the judgment at the legal rate, for all costs of court, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show itself justly entitled.

A TRUE COPY
I hereby certify
Jean Steptoe, District Clerk
San Augustine County Texas

Respectfully submitted,

**GUIDRY, BATES & HOYT
ATTORNEYS, LLP**
118 E. Hospital Street, Suite 100
Nacogdoches, Texas 75961
936/560-6954 phone
936/560-5996 fax

BY


JEFF BATES
SBN: 01905200

A TRUE COPY
I hereby certify
Jean Steptoe, District Clerk
San Augustine County Texas